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922 P.2d 868, 56 Cal.Rptr.2d 705, 96 Cal. Daily Op. Serv. 7411,  
96 Daily Journal D.A.R. 12,139  
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In re CLAUDE WHITNEY, a Judge of the Municipal Court, on Censure.

No. S050615.

Supreme Court of California

Oct 3, 1996.

#### SUMMARY

The Commission on Judicial Performance recommended that the Supreme Court publicly censure a municipal court judge for engaging in "willful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" (Cal. Const, art. VI, § 18, former subd. (c)(2)). The commission found that the judge, while conducting the municipal court's in-custody misdemeanor arraignment calendar, abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects. The commission also concluded that the judge's refusal to appoint counsel to assist indigent defendants at the arraignment stage constituted willful misconduct in office, but concluded that the remaining acts constituted, at most, conduct prejudicial to the administration of justice.

The Supreme Court adopted the commission's recommendation of public censure. The court held that the evidence supported the commission's findings. The record showed that the judge, as a matter of routine practice in the conduct of the in-custody misdemeanor arraignment calendar, failed to exercise his judicial discretion to consider releasing defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He further refused to appoint counsel to assist defendants at the arraignment itself, and failed to inform defendants pleading guilty or no contest of the negative consequences a conviction could have on a noncitizen with regard to immigration, as required by law. (Opinion by The Court.)

#### HEADNOTES

Classified to California Digest of Official Reports

(1) Judges § 6.2--Discipline--Public Censure--Grounds--Engaging in Willful Misconduct in Office--Engaging in Conduct Prejudicial to Administration of Justice That Brings Judicial Office Into Disrepute.

Public censure was warranted for a municipal court judge who, \*2 while conducting the municipal court's in-custody misdemeanor arraignment calendar, abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects, thereby engaging in "willful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" (Cal. Const, art. VI, § 18, former subd. (c)(2)). The record showed that the judge, as a matter of routine practice in the conduct of the in-custody misdemeanor arraignment calendar, failed to exercise his judicial discretion to consider releasing defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He further refused to appoint counsel to assist defendants at the arraignment itself, and failed to inform defendants pleading guilty or no contest of the negative consequences a conviction could have on a noncitizen with regard to immigration, as required by law.

[See 2 Witkin, Cal. Procedure (3d ed. 1985) Courts, § 32 et seq.]

#### THE COURT.

(1) The Commission on Judicial Performance has recommended that we publicly censure Claude Whitney, a judge of the Municipal Court for the Central Orange County Judicial District, for engaging in "willful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const, art. VI, § 18, former subd. (c)(2).) [FN1] Judge Whitney has not challenged the commission's findings or recommendation. Under rule 919(c) of the California Rules of Court, his decision not to make such a challenge "may be deemed a consent to a determination on the merits based upon the record filed by the Commission."

FN1 These proceedings were commenced prior to March 1, 1995, the operative date of amendments to article VI, section 18, of the California Constitution.

Following the appointment of special masters, hearings were held, evidence taken, and upon completion of the hearing the special masters prepared a formal report setting forth their findings of fact and conclusions of law. After consideration of written statements of objections to the master's report, the matter was argued before the commission, which adopted certain of the masters' findings of fact and conclusions of law.

The commission found that Judge Whitney, while conducting the Central Orange Municipal Court's in-custody misdemeanor arraignment calendar \*3 during 1992, abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects. After reviewing the record, we are satisfied

these findings are supported by the evidence. The record shows Judge Whitney, as a matter of routine practice in the conduct of the in-custody misdemeanor arraignment calendar, failed to exercise his judicial discretion to consider release of defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He further refused to appoint counsel to assist defendants at the arraignment itself, and failed, as required by law, to inform defendants pleading guilty or no contest of the negative consequences a conviction could have on a noncitizen with regard to immigration.

We also accept the commission's conclusion that Judge Whitney's refusal to appoint counsel to assist indigent defendants at the arraignment constituted willful misconduct in office, but conclude the remaining acts constituted, at most, conduct prejudicial to the administration of justice (See Adams v. Commission on Judicial Performance (1995) 10 Cal.4th 866, 877-878 [42 Cal.Rptr.2d 606, 897 P.2d 544]; Gubler v. Commission on Judicial Performance (1984) 37 Cal.3d 27, 46-47, 59 [207 Cal.Rptr. 171, 688 P.2d 551].)

The record also shows Judge Whitney is considered diligent and hard working, has a reputation of thoughtfulness on legal issues, is generally well regarded among the bench and bar, and has good relationships with court staff. Judge Whitney has since improved his conduct and has acknowledged he erred in several respects. The misconduct charged ended in 1992, well before these proceedings were commenced, and Judge Whitney responded honestly and appropriately to the commission's inquiry and disciplinary proceedings.

We adopt the commission's recommendation of public censure. This order will serve as the appropriate sanction. **\*4**

Cal. 1996.

In re Whitney

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